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1 April 2006 to 31 March 2007

# Fitness to practise annual report 2007

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# Foreword

Welcome to the fourth fitness to practise annual report of the Health Professions Council (HPC) covering the period 1 April 2006 to 31 March 2007. This report provides information about the HPC's work in considering allegations about the fitness to practise of our registrants.

The report presents the ways in which practice committee panels have handled the cases brought before them, as well as information about the number and type of cases and their outcomes.

This year has seen an increase in the number and complexity of hearings. This report provides more information on the types of cases that have been considered, including the types of allegations that we have received, cases where the panels have determined that there is a 'case to answer' and cases where a sanction has been imposed.

In line with our efforts to improve accessibility, we have reviewed the accessibility of the fitness to practise process, as well as the nature of the information we provide on our website.

The fitness to practise committees have also been involved in the review of our standards of conduct, performance and ethics. We will be consulting on them later in the year. You can find more information on the HPC in our main annual report and in the annual report on our approvals and monitoring processes.

Although there has been an increase in the number of cases considered by panels in 2006-2007, the overall number of registrants who appear before our panels is still less than 1%. The majority of registrants are still acting in a safe, lawful and effective manner.

We hope you find this report of interest.

**Keith Ross**

Chairman of the Conduct and Competence Committee

**Morag Mackellar**

Chairman of the Investigating Committee

**Tony Hazell**

Chairman of the Health Committee

# Introduction – overview of the fitness to practise process

## About us (the HPC)

We are the Health Professions Council. We are a health regulator, and we were set up to protect the public. To do this, we keep a register of health professionals who meet our standards for their training, professional skills, behaviour and health.

We currently regulate 13 health professions.

Profession	Abbreviation
Arts therapists	AS
Biomedical scientists	BS
Chiropodists / podiatrists	CH
Clinical scientists	CS
Dietitians	DT
Occupational therapists	OT
Operating department practitioners	ODP
Orthoptists	OR
Paramedics	PA
Physiotherapists	PH
Prosthetists / orthotists	PO
Radiographers	RA
Speech and language therapists	SL

For each profession there is one or more protected titles which can only be used by people registered with us. More information about protected titles can be found at the end of this report.

You should always check that a health professional using one of the protected titles above is registered with the HPC. It is a criminal offence to use a protected title if you are not registered. You can check whether a health professional is registered by logging on to [www.hpcheck.org](http://www.hpcheck.org) or calling +44(0)20 7582 0866.

## What is ‘fitness to practise’?

Fitness to practise is about more than just a registrant’s competence in their chosen profession. When we say that a registrant is ‘fit to practise’, we mean that they have the health and character, as well as the necessary skills and knowledge, to do their job safely and effectively. We also mean that we trust our registrants to act lawfully.

## Who can complain?

Anyone can make a complaint about a registered health professional. We receive complaints from other registrants, patients and their families, employers and the police. Registrants also have an obligation to provide us with any important information about conduct, competence or health. This means that registrants have to inform us about themselves and other registrants that they work with.

We only consider complaints about fitness to practise. The types of complaints we can consider are those about whether a registrant’s fitness to practise is ‘impaired’ (affected negatively) by:

- their misconduct;
- their lack of competence;
- a conviction or caution for a criminal offence (or a finding of guilt by a court martial);
- their physical or mental health; or
- a determination (a decision reached) by another regulator responsible for healthcare.

We can also consider allegations about whether an entry to the Register has been made fraudulently or incorrectly.

We will consider individually each case that is referred to us. There is no time limit in which a complaint has to be made, but it should be made as soon as possible. We can consider complaints when the matter being complained about occurred at a time that the registrant was not registered.

## How can a complaint be made?

We have just changed the way in which a complaint can be made. Previously we only accepted complaints made in writing. We have recently introduced a new complaints form and now, in certain circumstances, we will use this form to take a complaint over the telephone. We will still need the complaint form and the complaint to be signed by the complainant. We can only consider complaints that are about fitness to practise and can close cases that do not meet this criteria or where evidence to support the complaint has not been provided.

We recognise that for those who have literacy or language and accessibility difficulties, asking for a complaint to be made in writing presents some additional challenges. We are therefore trying to ensure our processes and procedures are as accessible as possible.

## The process

The process diagram opposite illustrates the procedures the HPC adopts when a complaint is made about an individual on our Register. If the complaint raises immediate concerns about public protection we can apply for an 'interim order'. Interim orders are explained later in this report.



## What happens when a complaint is received?

When a complaint is received, the matter is allocated to a **case manager**. We then carry out an investigation and provide the registrant with an opportunity to respond. We are obliged to provide the registrant with 28 days in which to respond to the complaint.

The matter is then passed to a panel of our Investigating Committee to determine whether there is a 'case to answer' that the registrant's fitness to practise is impaired. 'Case to answer' means that the Council has to prove that there is a *prima facie* case against the registrant that their fitness to practise is impaired. This panel

meets in private and considers on the basis of the available documents whether we need to take any further action. **Each panel is made up of at least three people, including a chairman, someone from the relevant profession and a lay person.** This is important because it ensures appropriate professional input and input from members of the public. The panel does not make a decision about whether the complaint is proven; they only decide whether it is probable that the HPC will be able to prove its case at the final hearing. If they believe it can, they will refer the complaint to another panel for further consideration.

The case will be referred to:

- a panel of the **Conduct and Competence Committee** for cases about misconduct, lack of competence and convictions/cautions;
- a panel of the **Health Committee** for cases where the health of the registrant may be affecting their ability to practise; or
- another panel of the **Investigating Committee** for cases where an entry to the Register may have been obtained fraudulently or made incorrectly.

This panel, again made up of at least three people, will hold a hearing to consider whether the allegation against the health professional is ‘well founded’ and, if it does, whether it is necessary to impose a sanction. In cases where health is an issue, a registered medical practitioner will sit on the panel. These panel hearings take place in public.

### Partners and panel chairmen

The HPC has appointed nearly 350 ‘partners’ to help carry out its work. Working as agents (not employees) of the HPC, partners provide the expertise the HPC needs for its decision making. The Fitness to Practise Department use partners to sit on panels and legal assessors, who are appointed to give advice on law and procedure to the whole of the tribunal.

We do not use Council members on our fitness to practise panels. We use appointed panel chairmen to ensure a separation between those who set Council policy and those who make decisions in relation to individual fitness to practise cases. We feel that this contributes to ensuring that our tribunals are fair, independent and impartial.

Partners are drawn from a wide variety of backgrounds – including clinical practice, education and management. We also use lay partners to sit on our panels. Each panel has at least one lay member, as well as a minimum of one member from the relevant profession. This balance ensures good public input into our fitness to practise decisions, combined with the professional expertise of our registrant partners.

### Standard of proof

The standard of proof that is used in HPC fitness to practise cases is the civil standard. This means that panels consider, on the balance of probabilities, whether an allegation is well founded. (The criminal standard means that the case has to be proved beyond all reasonable doubt.)

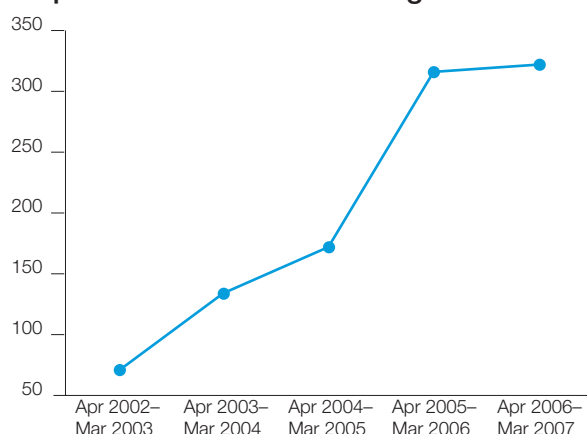
# Allegations

This section provides an update on the numbers and types of allegations that are received by the HPC. We have seen a slight increase in the number of complaints received about health professionals since 2005-2006.

**Table 1.1 Total number of allegations**

Year	Number of allegations received
April 2002-March 2003	70
April 2003-March 2004	134
April 2004-March 2005	172
April 2005-March 2006	316
April 2006-March 2007	322

**Graph 1.1 Total number of allegations**

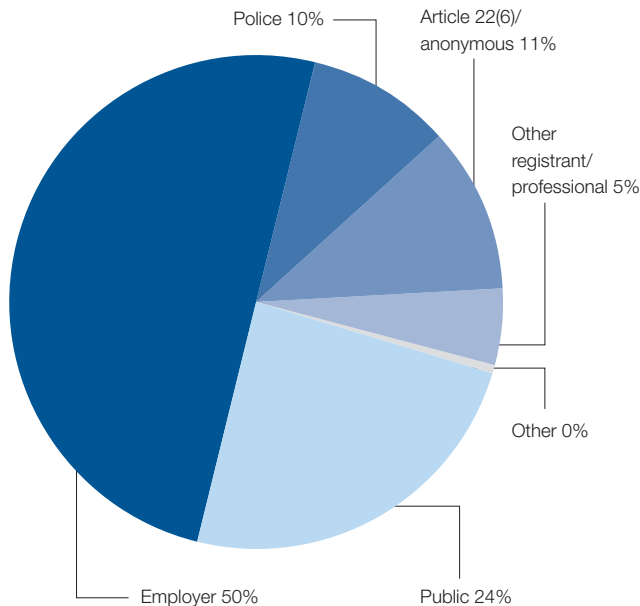


**Table 1.2 Who makes complaints?**

The table below shows allegations against registrants in 2006-2007 broken down by type of complainant.

Type of complainant	2005-2006	% of complaints	2006-2007	% of complaints
Public	68	21.6	78	24.2
Employer	123	38.7	161	50
Police	24	7.6	31	9.6
Article 22(6)/anonymous	58	18.4	35	10.88
Other registrant/professional	28	8.9	16	4.97
Other	15	4.8	1	0.3
<b>Total</b>	<b>316</b>	<b>100</b>	<b>322</b>	<b>100</b>



**Graph 1.2 Who makes complaints?**

This year has seen an increase in the number of complaints made by employers. Employers now make up 50% of our complainants. We have seen a percentage reduction in complaints using our Article 22(6) powers and by other professionals. Complaints made by members of the public have increased and now make up one in four of all our complaints. In 2005-2006 this number was one in five. We hope this is one indication that we are increasing awareness of the HPC and improving the accessibility of our processes.

### About Article 22(6)

We have seen the biggest reduction in complaints through our Article 22(6) process. Article 22(6) allows the HPC to make an investigation if we become aware of a complaint that has not been made in the usual way (this may be through anonymous allegation or through a newspaper article for example).

However, a higher number of complaints are still being made using our Article 22(6) process than by the police. It is a key way that we use our powers to protect the public.

## Allegations by profession and complainant type

The next table shows the number of allegations we have received by profession and complainant type.

**Table 1.3 Allegations by profession and complainant type**

Profession	Public	Employer	Police	Article 22(6)	Registrant/ professional	Other	Total
AS	1	2	1	0	0	0	4
BS	2	9	0	6	1	0	18
CH	22	6	2	4	4	0	38
CS	0	2	0	0	0	0	2
DT	1	4	0	1	0	0	6
ODP	0	18	0	2	2	0	22
OR	0	1	0	0	0	0	1
OT	12	20	8	0	0	0	40
PA	11	43	4	18	4	1	81
PH	24	20	7	0	1	0	52
PO	1	1	1	0	0	0	3
RA	1	28	8	4	3	0	44
SL	2	8	0	0	1	0	11

This table shows that for some professions, there is a higher volume of certain complainant types than for others. The public make up 58% of the complaint group for chiropodists, yet are only 24% of the overall complaint group. In the case of physiotherapists (46.15%) and occupational therapists (30%), there is also a higher than usual complaint rate.

There were no complaints about operating department practitioners from members of the public. This may be because verbal contact with this profession is limited. (ODPs are responsible for theatre care.)

For operating department practitioners, paramedics, radiographers and speech and

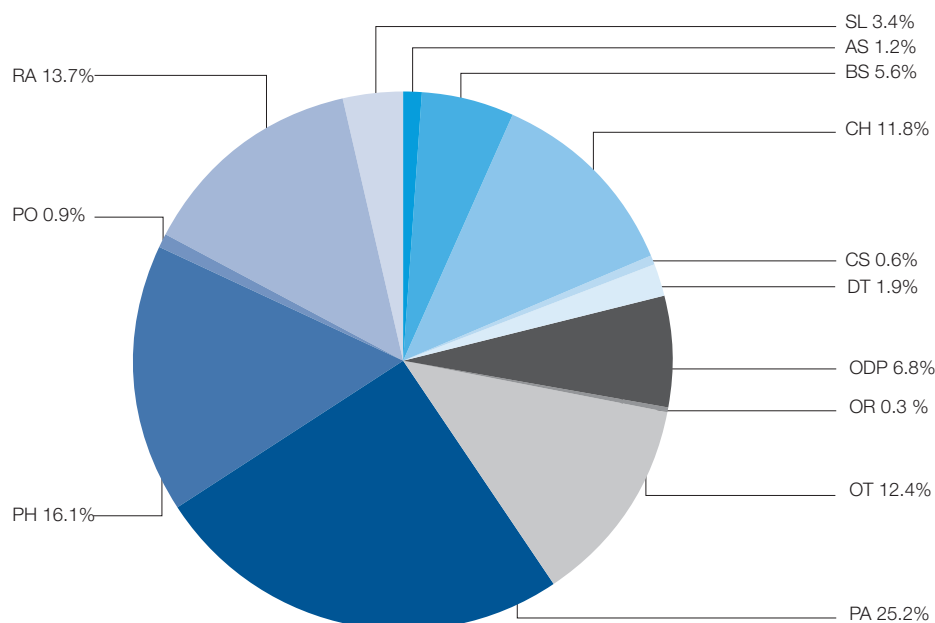
language therapists, the percentage of complaints from employers is higher than the overall complaint rate for this group.

The two tables below show the percentage of cases that have been received by profession, and provide a comparison to the total number on the Register. In cases concerning chiropodists, operating department practitioners and paramedics, the percentage of complaints is higher than the percentage total of those professions on the Register. Conversely, we have seen a reduction in the number of complaints about chiropodists and physiotherapists compared with the number that was received in 2005-2006.

**Table 1.4 Complaints by profession**

Profession	Number of complaints	% of total complaints	Number of registrants	% of total number on Register	Total % of registrants with complaints
AS	4	1.2	2344	1.3	0.17
BS	18	5.6	22533	12.7	0.08
CH	38	11.8	12671	7.1	0.30
CS	2	0.6	4251	2.4	0.05
DT	6	1.9	6281	3.5	0.10
ODP	22	6.8	8830	5	0.25
OR	1	0.3	1289	0.7	0.08
OT	40	12.4	28794	16.2	0.14
PA	81	25.2	13210	7.4	0.61
PH	52	16.1	40670	22.9	0.13
PO	3	0.9	855	0.5	0.35
RA	44	13.7	24316	13.7	0.18
SL	11	3.4	11487	6.5	0.10
<b>Total</b>	<b>322</b>	<b>100</b>	<b>177531</b>	<b>100</b>	<b>0.18</b>

**Graph 1.3 Complaints by profession**



**Table 1.5 Complaints by profession 2005-2007**

Profession	2005-2006	2006-2007
AS	2	4
BS	21	18
CH	61	38
CS	3	2
DT	7	6
ODP	19	22
OR	0	1
OT	38	40
PA	43	81
PH	79	52
PO	3	3
RA	27	44
SL	12	11
<b>Total</b>	<b>315</b>	<b>322</b>

## Types of complaint by profession

### Arts therapists

We have received complaints about an inappropriate relationship, record keeping and ending therapy without reasonable notice. We also received notification of a conviction.

### Biomedical scientists

Most of the complaints we have received about biomedical scientists come from employers. However, we have seen a change in the type of complaints compared with last year. In 2005-2006, the complaints usually concerned accurate analysis of test results. In 2006-2007 complaints were about registrants who had been convicted of child sex offences and offences concerning theft and fraud. We have also received complaints about biomedical scientists who have attended work under the influence of alcohol.

### Chiropodists / podiatrists

We have again seen a high number of complaints about chiropodists from members of the public. The majority of complaints were about treatment of corns and in-growing toenails, and about the hygiene of chiropody treatment rooms. We have also received a small number of convictions – one concerning allegations of theft from a patient.

### Clinical scientists

The complaints we received about clinical scientists related to their clinical competence.

### Dietitians

Complaints about dietitians have mainly concerned their clinical competence. We became aware of most complaints after a NHS Trust conducted or began an investigation.

### Occupational therapists

We have received a number of notifications of convictions or cautions from the police about occupational therapists. The other most common complaint about occupational therapists has concerned record keeping.

### Operating department practitioners

The complaints received about operating department practitioners in 2006-2007 have been very similar to those we received in 2005-2006. We again did not receive complaints about the competence of operating department practitioners; instead, we received complaints about misuse of drugs, convictions for child sex offences, alcohol dependency and fraud

### Paramedics

We have used our Article 22(6) powers most often in relation to cases concerning paramedics. We have tended to use them in relation to allegations that have been brought to our attention anonymously. We received varied allegations about paramedics, including convictions for child sex offences, misuse of drugs, clinical competence and poor treatment of patients.

### Physiotherapists

In cases concerning physiotherapists, most complaints have been about clinical competence. We have also seen more complaints of a sexual nature in this profession.

### Prosthetists / orthotists

The complaints about prosthetists and orthotists have included consent issues, fraud and alcohol-related convictions.

### Radiographers

A wide variety of complaints were received about radiographers. This profession was perhaps one of our most varied with regard to complaints. We received notification of convictions for sex offences, allegations about the self-administering of drugs, disclosure of confidential data, record keeping and breaches of the Ionising Radiation (Medical Exposure) Regulations (IRMER).

### Speech and language therapists

In a trend similar to that of 2005-2006, the majority of complaints received about speech and language therapists have related to their competence – including record keeping, communication skills and management of dysphasia.

## Allegations by route to registration

**Table 1.6 Allegations by route to registration**

Route to registration	2005-2006	% of allegations	2006-2007	% of allegations
UK	242	76.6	278	86.3
International	30	9.5	29	9
Grandparenting (route A)	10	3.2	11	3.4
Grandparenting (route B)	25	7.9	4	1.3
Not known	8	2.2	0	0

When we register an individual, we are saying that they are fit to practise – that is they have the skills, health and character to practise their chosen profession. We are not saying that they are fit for purpose – fit for a particular role in a hospital for example. Employers still need to undertake their usual procedures before offering an individual a position. For detailed information on how people can become registered with us, see our website: [www.hpc-uk.org](http://www.hpc-uk.org)

### Allegations by location

**Table 1.7 Allegations by home country**

Home country	2005-2006	2006-2007	% of complaints
England	280	279	86.65
Scotland	10	19	5.9
Wales	3	13	4.04
Northern Ireland	10	7	2.17
Other	12	4	1.24

We received the majority of our allegations against health professionals whose registered address is in England. This number is broadly the same as the number of allegations received in 2005-2006.

### Allegations by type of impairment

**Table 1.8 Allegations by impairment**

Type of impairment	Number of allegations 2006-2007
Conviction/caution	41
Misconduct and lack of competence*	245
Lack of competence	31
Health	2
Determination by another regulator	0
Incorrect entry	3
<b>Total</b>	<b>322</b>

\*This includes misconduct alone

The table opposite indicates the type of allegations that we receive about registrants. The majority of our complaints do have a misconduct element to them. Misconduct issues in 2006-2007 have included:

- poor record keeping;
- failure to gain informed consent;
- dishonesty;
- breach of confidentiality; and
- inadequate communication.

We have continued to receive allegations about misuse of drugs in 2006-2007.

### Convictions

The professions regulated by the HPC are on the Home Office Circular for Notifiable Occupations. This means that we should automatically be informed when a registrant is cautioned or convicted of a criminal offence. It should also be noted that the professions regulated by the HPC are exempt from the Rehabilitation of Offenders Act. This means that convictions are never

regarded as ‘spent’ and can be considered in relation to a registrant’s character. Registrants should also inform the HPC if they are convicted or cautioned for any offence. We receive notification when a registrant is convicted of an offence and the offence is disposed of via a conditional discharge.

We receive notification about a wide range of offences. The types of offences we have been informed about in 2006-2007 include:

- drink-driving;
- failure to provide a specimen for analysis;
- possession of indecent or pseudo indecent images of children;
- distribution of indecent images;
- possession of an offensive weapon;
- indecent behaviour with a minor;
- possession of a controlled drug;
- criminal damage;
- possession of a class A drug;
- common assault;
- theft from an employer; and
- murder.

### Withdrawn

The tables below show the number of complaints by profession and by complaint group that were withdrawn in 2006-2007. This number includes complaints that were made in 2005-2006 and were subsequently withdrawn in 2006-2007. Complaints are withdrawn for a variety of reasons. This can include a complainant withdrawing their allegation. It is very difficult for us to proceed with allegations when there is no evidence to support the allegation and when the complainant wishes to have no further involvement in the process. We are often informed at the outset of disciplinary and police proceedings and it is subsequently found that the allegation is not proven.

However, we may proceed with a complaint via our Article 22(6) process if we feel that there is a fitness to practise issue to consider and when it is necessary for the protection of the public.

**Table 1.9 Withdrawn by profession**

Profession	Number
AS	1
CH	6
DT	3
BS	4
ODP	1
OT	5
PA	4
PH	2
RA	2
<b>Total</b>	<b>28</b>

**Table 1.10 Withdrawn by complaint group**

Type	Number
Article 22(6)	3
Anonymous	1
Employer	4
Police	3
Professional	1
Public	10
<b>Total</b>	<b>28</b>

# The Investigating Committee

The role of an Investigating Committee panel (ICP) is to investigate any allegation referred to it and to consider whether there is a **'case to answer'**.

An ICP is a paper-based exercise at which the registrant does not appear. The function of this preliminary procedure is to help ensure that a registrant is not required to answer an allegation at a full public hearing unless the HPC has established a *prima facie* case against the individual.

ICPs meet in private and consider all the available information, including any information sent to us by the registrant in response to the complaint.

If a panel decides that there is a case to answer, it is at this point that information enters the public domain and is disclosable. This means we have to inform the four UK Departments of Health and can provide information on what the allegation is about. (We have recently changed our policy in relation to information that we provide on our website. More information on this can be found later in this report.)

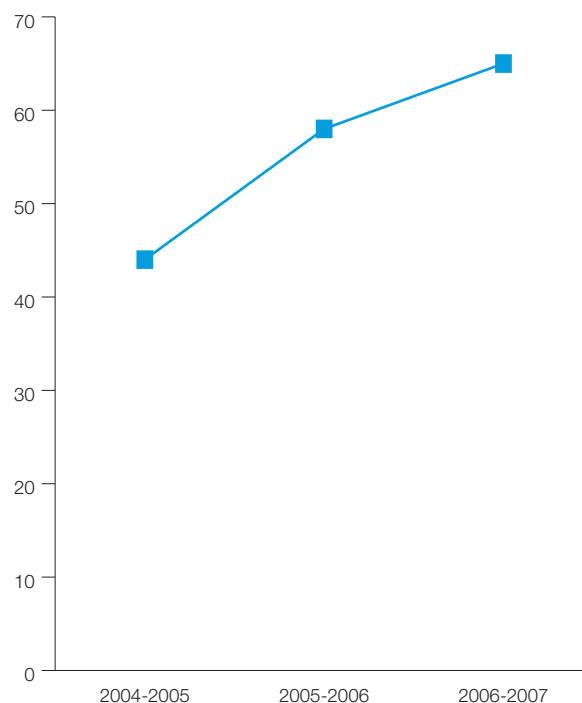
In 2006-2007 panels of the Investigating Committee met four times a month and considered 224 cases to determine whether there was a case to answer in relation to the allegations received. This number includes some cases that had been heard twice in that year, as the panels had requested further information.

The past year has seen an increase in the number of cases considered by a panel and where the panel has determined that there was a case to answer. The table below shows the percentage of cases where a case to answer decision was reached.

**Table 2.1 Case to answer percentage**

Year	Percentage of cases (%)
2004-2005	44
2005-2006	58
2006-2007	65

**Graph 2.1 Case to answer rate**



Although we have seen only a slight increase in the number of allegations received, the case to answer rate has increased. This means that more cases have to be considered by full panels of the various committees and incur the costs associated with this.

## Decisions by panels

The table below shows decisions made by panels of the Investigating Committee. Of the allegations considered, more than half were found to have a case to answer in the following professions.

- Arts therapists
- Biomedical scientists
- Chiropodists / podiatrists
- Occupational therapists
- Operating department practitioners
- Paramedics
- Physiotherapists
- Prosthetists / orthotists



## Case to answer by profession

The overall case to answer rate is 65%. The table below indicates that there are four professions (BS, OT, ODP and PA) where this rate is higher than the current average.

**Table 2.2 Case to answer by profession**

Profession	Committee						
	Total allegations heard	No case to answer	Further information requested	Conduct and Competence	Investigating	Health	% case to answer
AS	2	1	0	1	0	0	50
BS	8	0	0	8	0	0	100
CH	24	11	1	11	1	0	50
CS	0	0	0	0	0	0	0
DT	0	0	0	0	0	0	0
OR	0	0	0	0	0	0	0
OT	29	9	0	19	0	1	69
ODP	18	4	0	13	0	1	78
PA	47	9	0	37	0	1	81
PH	59	20	1	19	19	0	64
PO	2	1	0	1	0	0	50
RA	25	13	0	11	1	0	48
SL	10	5	2	3	0	0	30
<b>Total</b>	<b>224</b>	<b>73</b>	<b>4</b>	<b>123</b>	<b>21</b>	<b>3</b>	<b>65</b>

Allegations that have resulted in a **case to answer** decision have involved the following issues.

- sexually inappropriate comments in the workplace
- inadequate client care and risk assessment
- inappropriate treatment of patients
- falsification of documentation to gain annual leave
- taking sick leave when annual leave refused
- clinical incompetence
- inappropriate relationship with a patient
- sexual harassment of a female colleague
- self administration of drugs whilst on duty
- dereliction of duty
- murder
- accessing pornography in work hours
- general lack of competence
- possession of drugs
- possession of child pornography

- inadequate communication skills
- assault of a patient
- harassment of a colleague
- theft of prescription-only medicine
- insufficient treatment (including not taking a patient to hospital)
- grievous bodily harm
- falsification of records
- destruction of patient records
- acting outside scope of practice
- failure to act in the best interest of patients
- altering registration details
- attending work under the influence of alcohol
- registrant able to explain
- disclosed patient details – carried out by administrative staff
- inappropriate treatment – treatment was appropriate
- failure to sterilise equipment – no evidence
- treatment that caused infection – treatment did not cause infection
- criminal damage – domestic incident
- relationship with a patient – registrant did not deal with the patient in a professional capacity
- forging client signature – did not forge signature

Allegations that have resulted in a **no case to answer** decision have involved the following issues.

- poor speech and language therapy treatment – registrant answered all the issues raised by the complainant
- misled colleague in completing timesheet – issue adequately resolved by the Trust
- driving without due care and attention – not work related, no concerns about fitness to practise
- excessive speeding
- convictions for shotgun offences
- drink-driving
- acting in an intimidating manner to another professional – no evidence
- inappropriate charging – clerical error for which the registrant apologised
- failure to disclose convictions – not a deliberate failure
- below level of competency – no evidence
- storage of prescription-only medicine –

In most instances panels determined that there was no case to answer in relation to drink-driving convictions. In such cases, panels will take into account whether a registrant was on call, on their way to or from work and the level of alcohol in the blood. They also take into account whether a prison sentence has been imposed by the Courts.

Where there is a no case to answer decision, we can consider that allegation again if a new allegation, of a similar type, is made within a three-year period about the same registrant. We considered two complaints in 2006-2007 where a no case to answer decision had previously been made.

## Case to answer by complainant

The average case to answer rate is 65%. However, the table below indicates that certain complainant groups have a higher rate than this. It is most noticeable in complaints that we receive from employers and through our Article 22(6) process. Complaints that we receive from employers tend to have been dealt with at the employer level and the registrants involved provided with a level of support from their employer. A number of complaints were received from employers about sexual misconduct, misuse of drugs and failure to meet the standards of proficiency.

**Table 2.3 Case to answer by complainant**

Complainant	Case to answer	No case to answer	Further information requested	Total	Percentage case to answer (%)
Police	9	21	2	32	28
Employer	82	16	0	98	83.7
Article 22(6)	38	6	0	44	86.7
Professional	5	7	0	12	41.67
Public	12	22	2	36	33.3
Registrant	1	1	0	2	50
<b>Total</b>	<b>147</b>	<b>73</b>	<b>4</b>	<b>224</b>	<b>65</b>

We have seen an increase in the number of complaints from the public that have had a case to answer decision; however, this is still lower than the overall rate. We do take a number of steps to gather all possible information about the complaints that we receive. This includes asking members of the public for access to their medical records. This can clarify some of the points raised in their complaints.

## Case to answer and representation

The next two tables provide information on the case/no case to answer correlation by representation. We received a response in 72% of cases.

In almost all the no case to answer decisions a response has been received from the registrant or their representative. The panel may be better able to take a decision where the registrant has provided information as to the circumstances of the complaint or has rebutted the allegation. It is important to note that we do have powers to check with the complainant and other parties, points that are raised by the registrant when they are making their response to the panel.

**Table 2.4 Case to answer and representation**

Type of complainant	Case to answer	No response	Response from registrant	Response from representative
Article 22(6)	38	6	14	18
Employer	82	28	45	9
Police	9	5	4	0
Professional	5	0	4	1
Public	12	1	11	0
Registrant	1	0	1	0

Type of complainant	No case	No response	Response from registrant	Response from representative
Article 22(6)	6	1	5	0
Employer	16	1	14	1
Police	21	0	21	0
Professional	7	0	5	2
Public	22	1	20	1
Registrant	1	0	1	0

### Time taken from receipt of allegation to Investigating Panel

The table below displays how long it took in 2006-2007 for allegations to reach an investigating panel.

**Table 2.5 Speed of process**

Number of weeks	Allegations
4-10	23
11-20	84
21-30	39
31-40	35
41-50	17
Over 50	19

On receipt of an allegation against a registrant, the case will be allocated to a case manager. The case manager will look into the matter further, for instance by seeking information from the police or gathering information from the employer. In some instances we may need to take witness statements.

We will write to the registrant and provide them with the information we have received. We will allow the registrant 28 days to respond, before we present the case to an investigating panel.

There may however be some delays in this process. The reasons for delay include requests for extension of time from the registrant and delays in gathering the information that we require.

It is important to note that the HPC do have powers to demand information if it is relevant to

the investigation of a fitness to practise issue. We use this power to demand information from, for example, the police and from employers.

We may also delay our investigation until any proceedings undertaken by the employer have been concluded or when a criminal investigation is pending. It may also be necessary to delay our processes when we receive another allegation about the same registrant or the same allegation about more than one registrant.

However, every case will be treated on its own merits. If the allegation is so serious as to require immediate public protection we can consider applying for an interim order. More information about interim orders is provided later in this report.

We are obliged to manage our case load expeditiously and we try to ensure that we have the processes in place for us to do so. We need to balance the need to move complaints forward – in order to protect the public – with the need to gather the information necessary for the registrant to respond to the case.

The average length of time taken for a case to reach an investigating panel is 26 weeks.

At the end of March 2007 a further 219 cases were awaiting consideration by panels of the Investigating Committee.

# Incorrect entries

The HPC can consider allegations about whether an entry to the Register has been made fraudulently or incorrectly. Decisions about such cases are within the remit of the Investigating Committee. If a panel decides that an entry to the Register has been made fraudulently or incorrectly they can remove or amend the entry or take no further action.

During 2006-2007 panels of the Investigating Committee considered five cases. In two cases the registrants were removed from the Register, following a hearing to consider whether the entry had been fraudulently procured. In both instances the registrants failed to declare criminal convictions which had occurred prior to their applications for registration. The application forms clearly state that applicants are obliged to declare all convictions or offences for which a police caution has been accepted.

In one other case, the registrant failed to declare a conviction for which a conditional discharge had been received. The panel found that the entry onto the Register was incorrectly made, but after hearing mitigation from the registrant decided to take no further action.

In the final two cases it was determined that although incorrect entry had occurred, it was not the fault of the registrant concerned. In one case the registrant was registered despite a low English language test score. By the time of the hearing, the registrant had re-taken the test and the panel found that there was no need to take any further action. In the other case, the applicant should have been asked to provide further information on his application form. Instead of being advised of this, he was incorrectly registered. The registrant subsequently provided the required information and it was determined that this material demonstrated that the registrant met the standards of proficiency (for physiotherapists). It was therefore not necessary to take any further action.

We considered five cases of incorrect entry in 2006-2007 and have a further 18 cases listed for hearing in 2007-2008.

# Interim orders

In certain circumstances, our practice committees may impose an **interim conditions of practice order**, or an **interim suspension order**, on health professionals who are the subject of a fitness to practise allegation. This power is used when the nature and severity of the allegation is such that, if the health professional remains free to practise without restraint, they may pose a risk to the public or to themselves.

This power can be used prior to a decision about a case being reached, or when a decision has been reached to cover the period of the appeal (when a final disposal order has been made the registrant has 28 days in which to appeal this decision).

The table below displays the number of interim orders granted by profession. It further indicates the number of cases where an interim order has been reviewed/revoked. We are obliged to review an interim order six months after it is first imposed and every three months thereafter.

**In order to ensure that resources are used to best effect, case managers from the Fitness to Practise Department – instead of lawyers – act as presenting officers. They regularly present applications for interim orders and reviews of interim orders.**

In 2006-2007 only one more interim order was imposed than in 2005-2006 (when 16 were granted). However, there was a 68% increase in the number of interim orders that required review. This was because there were cases that had not been listed for final hearing, or where a criminal or employer investigation was still in process.

## Types of cases where an interim order was imposed

In 2006-2007 17 interim orders were granted. In one case the panel felt it was more appropriate to impose an interim conditions of practice order as they felt that the individual had the support of their employer and the public would be adequately protected by such conditions. In all

other cases where an interim order was imposed, the panel felt that it was appropriate to suspend the registrants concerned.

There were seven cases where registrants had been convicted of offences involving the possession, and in some cases the distribution, of indecent photographs of children. The registrants concerned had also been placed on the Sex Offenders Register. The Council's 'Indicative sanctions practice note' clearly sets out our policy in relation to registrants who have been convicted of such offences. It states that:

*'Although inclusion on the Sex Offenders Register is not a punishment, it is intended to secure public protection from those who have committed certain types of offences. Generally, panels should regard it as incompatible with the HPC's obligation to protect the public to allow a health professional to remain in or return to unrestricted practice whilst subject to registration.'*

In three further cases, the registrants concerned were alleged to have misused drugs in the workplace. In one incident the registrant was charged with identity theft and in another the registrant was alleged to have stolen items from an incident scene. In three other cases there were serious concerns regarding the clinical misconduct of the registrants involved. In one case, the registrant had been convicted of manslaughter.

**Panels impose interim orders when they feel that the public or the registrant involved require immediate protection.**

Also taken into account is the potential impact upon public faith in the regulatory process, should a registrant be allowed to continue to practise without restriction, whilst subject to an allegation.

**Table 3.1 Number of interim orders**

<b>Profession</b>	<b>Granted</b>	<b>Reviewed</b>	<b>Revoked</b>
AS	0	0	0
CS	1	1	0
CH	1	2	0
DT	0	0	0
BS	2	7	0
ODP	5	11	1
OR	0	0	0
OT	0	0	0
PA	5	4	0
PH	1	10	0
PO	0	0	0
RA	2	3	0
SL	0	0	0
<b>Total</b>	<b>17</b>	<b>38</b>	<b>1</b>

Interim orders are also applied for after the final disposal hearing has taken place in a case. This is because when a final sanction is imposed, the registrant has a 28-day period in which they can appeal the decision to the High Court. The table above does not include interim orders which have been granted at this stage.

In 2005-2006 no interim orders were either applied for or granted in cases concerning paramedics. 2006-2007 has seen five interim orders granted against paramedics. In all five cases the allegations did not relate to clinical competence. Four of the allegations concerned possession of indecent photographs of children.



# Public hearings – panels of the Conduct and Competence and Health Committees

The HPC is obliged to hold hearings in the home country of the registrant concerned, and the majority take place at the HPC's offices in London. However, 2006-2007 saw such an increase in the number of hearings, we also used other venues in and around London.

During the year we held hearings in Aberdeen, Belfast, Bristol, Cardiff, Chester, Devizes, Edinburgh, Glasgow, Manchester, Mold, Nottingham, Peterborough, Sheffield, Swansea and Wolverhampton.

In deciding where to hold a hearing, we take into account a number of issues including:

- the home country of the registrant;
- the number of witnesses involved;
- the difficulties some witnesses would have in travelling to London; and
- whether any witnesses are vulnerable.

The practice committees have decided that these are appropriate criteria to take into account when determining where a hearing should be held.

Nevertheless, the registrant can apply to the panel for the hearing to be held elsewhere. It is at the discretion of the panel hearing the case to decide how and where the case should be conducted.

We normally hold our hearings in public, as this is required by the Health Professions Order. However, we can hold a hearing in private if the panel is satisfied that, in the interest of justice or for the protection of the private life of the health professional, the complainant, any person giving evidence or any patient or client, the public should be excluded from all or part of the hearing. If a hearing is held in private, we are still obliged to announce in public the decision, and any order made in relation to the case. In cases where the decision is well founded, we publish this information on our website. This reflects the practice of the other health regulators.

The Council has recently reviewed the level of detail that is provided on the HPC website in

relation to cases. Our previous practice was to place information on the site as soon as the investigating panel had made a case to answer decision. This meant that information was online for a number of months before a hearing had been fixed. The Council felt that although this information should remain publicly available, it was disproportionate to have this level of information on the website so far in advance of a hearing. The Council has decided:

- to place information online four weeks in advance of the fixed hearing date;
- to continue to place online the decision and order in cases where the allegation is well founded; and
- to continue to place information regarding cases where an interim order had been imposed online.

The table overleaf demonstrates the increase in the number of cases where a hearing has been held.

**Table 4.1 Number of public hearings**

Type of hearing	Number of cases considered		
	2004-2005	2005-2006	2006-2007
Interim order and review	25	28	55
Final hearing*	66	86	125
Review hearing	11	26	42
<b>Total</b>	<b>102</b>	<b>140</b>	<b>222</b>

\*More than one case can be considered at a final hearing

### What powers does a panel have?

Any action taken by the panel is intended to protect the public and is not intended as a punishment. The panel will always consider the individual circumstances of a case and take into account what has been said by all those at the hearing before deciding what to do. In hearings of the Health Committee, or where the allegation relates to lack of competence, the panel will not have the option to strike off at the first hearing. This is because we recognise that in cases where ill health has impaired fitness to practise, or where competence has fallen below expected standards, it is possible for the situation to be remedied over time. The registrant may seek treatment or training and may be able to come back onto the Register if the panel is satisfied that this is safe.

A number of options (also known as 'sanctions') are available to final hearing panels. These sanctions are listed below.

- Take no further action.
- Send the case for mediation.
- Impose a caution order. This means that the word 'caution' will appear against the registrant's name on the Register. (Caution orders can be between one and five years in length.)
- Place some sort of restriction or condition on the registrant's registration. This is known as a 'conditions of practice order'. (This might include requiring the registrant to work under supervision or to undertake

further training.)

- Suspend registration. (This may not be for longer than one year.)
- Order the removal of the registrant's name from the Register, which is known as a 'striking off order'.

### Time taken from allegation to hearing

Of the cases that reached a final hearing in the year 2006-2007, it has taken an average of 67 weeks from receipt of the allegation for the final hearing to be held. From the date of the decision made by the Investigating Panel, it has taken an average of 48 weeks for the case to be listed for final hearing.

### Costs

The HPC is funded by registration fees. The budget for the Fitness to Practise Department in 2006-2007 was approximately £2.6million – this was around 25% of the HPC's budget. In 2005-2006 the FTP budget was approximately 20% of the overall budget; in 2007-2008 the figure will increase to around 29%, as we anticipate an increase in the number and complexity of hearings over the coming year.

For each case, the HPC is obliged to cover the cost of:

- venue hire (and associated costs);
- a shorthand writer;
- a legal assessor (fee and expenses);

- panel members (fees and expenses); and
- legal services (costs incurred in preparing and presenting the case).

We are continually looking at ways to ensure our case costs are managed efficiently. We use case managers as presenting officers and we use them to take witness statements. We also try to hold a number of cases on any one day.

In 2006-2007, our solicitors were instructed on 301 cases (including one High Court appeal), compared with 195 in 2005-2006. The increase is due to the number of review hearings held in 2006-2007 and the increase in the 'case to answer' rate. In 2007-2008 our case managers will begin to present review hearings in place of solicitors.

Of the cases that reached final hearing in 2006-2007 and where a final disposal decision was reached, the highest amount spent on an individual case to cover external legal costs was approximately £78,000. The total legal cost incurred in this case was £113,000. Only one other case incurred legal costs in excess of £30,000 in 2006-2007. This case was a High Court appeal where the HPC recouped some of its costs following a cost order against the registrant. Of the 301 cases, 30 incurred costs of between £10,000 and £30,000 in 2006-2007. All other cases incurred costs of less than £10,000. It is difficult to provide an average cost per case because some cases have only recently been instructed on, whereas others were concluded in 2006-2007.

### **Action taken at final hearings**

All well founded HPC decisions are published on our website at [www.hpc-uk.org](http://www.hpc-uk.org).

## Media coverage

There were a number of media reports about fitness to practise cases in 2006-2007.

One of our key obligations is to inform and educate registrants, and inform the public, about our work. Media coverage of our cases is important because it increases awareness about the work of the HPC and shows that our processes are transparent.

We had media coverage about fitness to practise cases in the following media outlets.

- The Sun
- Scottish Daily Express
- Metro(Scotland)
- Birmingham Mail
- Welsh Daily Post
- Manchester Evening News
- Liverpool Echo
- Newcastle Evening Chronicle
- BBC Radio South West

We also had coverage in a number of other regional and local newspapers and in various online news services.

# Health Committee

Panels of our Health Committee consider allegations that a registrant's fitness to practise is impaired by their physical or mental health. We are allowed to take action when the health of a registrant may be impairing their ability to act safely and effectively. If the allegation is proven then a caution, conditions of practice or a suspension order can be imposed. We are not allowed to strike someone off the Register in health cases except where the registrant in question has already been suspended for two or more years. This is because our sanctions are not intended to punish the registrant but to protect the public. A suspension order for instance, may give the registrant an opportunity to address their health issues before returning to practice. Conditions of practice such as undergoing alcohol rehabilitation may be imposed.

The Health Committee considered six health cases in 2006-2007. In two of the cases considered by panels of the Health Committee, it was determined that the registrant's fitness to practise was not impaired.

In these two cases the panels felt that the registrants concerned had been unwell at the time the allegation was made. The HPC is obliged to prove that a registrant's fitness to practise is impaired. However, in both cases, by the time of the hearing, the registrants had taken steps to overcome their health problems and had both returned to work without supervision.

In one other case, the panel determined that the matter would be better dealt with as a misconduct allegation and referred the matter to the Conduct and Competence Committee. The registrant was subsequently struck off the Register.

In the three cases where the panel determined that the registrant's fitness to practise was impaired by reason of their health, the issues were as follows.

- Hypothyroidism
- Hypothyroidism and stress
- Alcohol dependency (physical and psychological)

In one case the registrant admitted that her fitness to practise was impaired by reason of her health. She felt that her tiredness and anxiety would be exacerbated by any return to her profession and the panel subsequently imposed a suspension order.

In one other case where the health problem was hypothyroidism, the registrant had retired and the panel felt that it was appropriate to impose a suspension order.

In the two cases set out above, both cases had initially been considered by panels of the Conduct and Competence Committee as the allegations were that the registrants' fitness to practise was impaired by reason of their lack of competence. Both registrants made an application for their cases to be referred to the Health Committee. In both instances the allegation that the registrant's fitness to practise was impaired by reason of their health was well founded.

In the final case concerning health, the registrant's fitness to practise was found to be impaired by reason of their health in that they were suffering from alcohol dependency. The panel imposed a conditions of practice order which required the registrant to abstain from alcohol and undergo rehabilitation.

At the end of March 2007 there were six outstanding cases within the remit of the Health Committee.

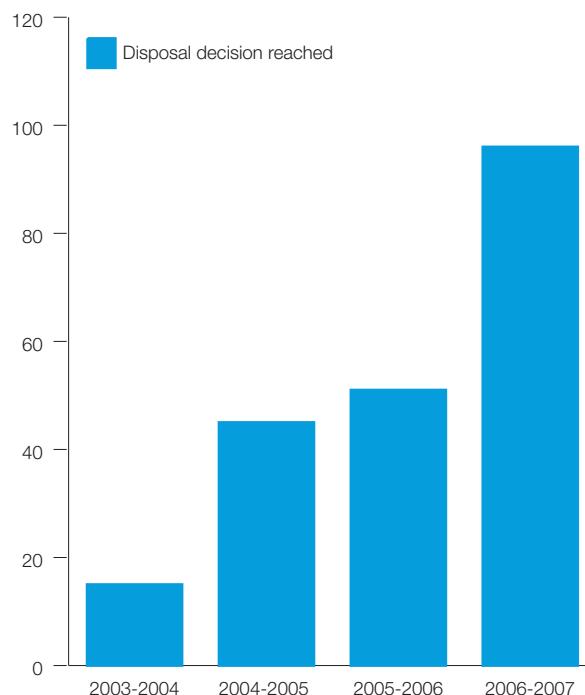
# Conduct and Competence Committee

Panels of our Conduct and Competence Committee consider allegations that a registrant's fitness to practise is impaired by reason of their misconduct, lack of competence, a conviction or caution, or a determination by another regulator. In all cases, except lack of competence, the panel has the full range of sanctions at their disposal. In cases concerning lack of competence, the panel can not impose a striking off order. We have seen another increase in the number of cases considered by panels of the Conduct and Competence Committee and the table below indicates the number of cases where a final disposal decision was reached. There were also 16 cases which were either part heard or adjourned and two cases which were referred to a different committee for consideration.

**Table 4.2 Conduct and competence hearings**

Year	Disposal decision reached
2003-2004	15
2004-2005	45
2005-2006	51
2006-2007	96

**Graph 5.1 Conduct and competence hearings**



## Outcome and type of allegations

The next section of the report outlines the type of cases considered by the Committee where it was found that the registrant's fitness to practise was impaired. Information on not well founded allegations is provided later in the report. Table 4.3 sets out action taken by type of allegation, in relation to the cases considered by panels in 2006-2007.

**Table 4.3 Outcome by type of allegation**

Type of allegation	Removed	Struck off	Suspension	Conditions of practice	Caution	No further action	Not found	Not allowed
Misconduct	0	19	12	5	19	1	11	0
Lack of competence	0	0	1	0	4	0	3	0
Conviction/caution	0	4	5	0	4	2	2	0
Health	0	0	1	1	0	0	2	1
Incorrect/fraudulent entry	2	0	0	0	0	3	0	0

### Convictions/cautions

Panels considered 17 cases where the registrant had been convicted or cautioned for a criminal offence. In 15 of the 17 cases the panels determined that the registrant's fitness to practise was impaired by reason of a conviction or caution. In 2005-2006 eight such cases were considered.

The offences that were considered by panels were as follows.

- making indecent photographs or pseudo photographs of a child
- possession of indecent images of a child
- driving under the influence of alcohol
- assault occasioning actual bodily harm
- shoplifting
- driving with excess alcohol and no insurance
- driving without due care and attention (this case also involved misconduct in that the registrant engaged in a sexual act in a public place)
- possession of an offensive weapon
- protection from harassment act
- obtaining property (salary) by deception

- theft from employer
- forgery
- course of conduct amounting to harassment
- wilful fire raising, theft and malicious mischief
- wounding with intent
- criminal damage
- sending an offensive message by public communication

### Struck off

In four instances it was felt that the offences committed were of such a serious nature that in order to adequately protect the public, the registrant needed to be struck off the Register.

In a case concerning a paramedic, the registrant was struck off the Register after it was found that his fitness to practise was impaired by reason of his conviction for obtaining property (salary) by deception. The paramedic was working for another employer whilst receiving sick pay from his employing trust. The Crown Court had ordered him to pay compensation on £1,139.44. He was struck from the Register because of the nature of the dishonesty and the serious abuse of trust which the conviction involved.

In two cases, one concerning an operating department practitioner, and the other a physiotherapist, the registrants were struck off the Register due to offences concerning the making of indecent photographs or pseudo photographs of a child – and in the case of the operating department practitioner, for the possession of indecent photograph(s) of a child. The panels felt that the public needed to be protected from the behaviour of the registrants and to have faith in the regulatory process.

The operating department practitioner had been convicted of 16 counts of making indecent photographs of a child. He had also used his credit card to access a website which showed indecent images of young girls. The registrant was also placed on the Sex Offenders Register until 2010. The panel therefore felt that their only option was to strike the registrant from the Register.

The four cases above set out the types of convictions (those of a sexual nature and dishonesty) which are an indication of the type of offence which might result in a registrant being struck off the Register. These are the types of issues which might prevent an applicant from being granted registration. In 2005-2006 the panels struck off registrants for convictions which involved deception – another type of conviction which might lead to registration not being granted.

### **Suspension**

In five cases, registrants were suspended following a finding of impairment to fitness to practise following a conviction or caution. In two cases, the convictions concerned violence. In the first case, a biomedical scientist was convicted of wounding with intent and sentenced to a period in prison. The offence was against his partner. The registrant admitted that his fitness to practise was impaired and the panel suspended him. They felt that there were no concerns regarding his professional competence and they took into account all of the steps he had taken to address his behaviour.

In the other case, concerning a chiropodist, the registrant received a police caution for assault occasioning actual bodily harm against his parents. The panel felt that the offence, although an isolated incident, was one which would undermine public faith in the profession of chiropody.

A paramedic was convicted of an offence of theft from his employer. The registrant concerned stole 18 canisters of entonox. The registrant admitted that his fitness to practise was impaired. However, in deciding what sanction to impose, the panel took into account that the registrant had been subject to a traumatic incident and had suffered stress and sought help as a result of that incident. The panel felt that the registrant needed to resolve this stress and be able to prove that he could deal with it before he could return to any level of practice.

In two more cases registrants were suspended as a result of their convictions/cautions – one for two counts of driving under the influence of excess alcohol. The registrant had served four weeks in prison. In the other case the registrant received two police cautions for shoplifting.

### **Conditions of practice**

There were no cases where a registrant had been convicted or cautioned for an offence where a conditions of practice order was imposed.

### **Cautions**

In four cases registrants were cautioned by the HPC due to a finding of impairment to their fitness to practise following a conviction or caution. Registrants were convicted, or received a police caution, for the following offences.

- protection from harassment act
- course of conduct which amounted to harassment
- driving under the influence of alcohol
- sending an offensive message by public communication



In all four cases the panel took into account what would be a proportionate sanction and found that a caution order would adequately protect the public.

There were two final instances where a registrant’s fitness to practise was found to be impaired, however the panel(s) did not deem it necessary to take any further action. The offence involved in both cases was driving a vehicle under the influence of excess alcohol.

The table below sets out the professions of the registrants who had been convicted of a criminal offence or accepted a police caution.

**Table 4.4 Convictions by profession**

Profession	Number
Biomedical scientist	1
Chiropodist / podiatrist	1
Operating department practitioner	3
Occupational therapist	4
Paramedic	5
Physiotherapist	2
Prosthetist / orthotist	1
Radiographer	1

### Misconduct

In 2006-2007, 67 disposal decisions were made in cases involving allegations to the effect that a registrant’s fitness to practise was impaired by reason of their misconduct. In some cases, the allegation was one of lack of competence and misconduct. The issues that were considered included:

- self administering drugs;
- being paid sick and study leave;
- authorisation of incorrect results;
- poor record keeping and clinical assessment;
- inadequate treatment of patients;

- unacceptable behaviour at work;
- working whilst under the influence of alcohol;
- poor communication with service users;
- inappropriate intervention;
- misinterpretation of examinations;
- accessing inappropriate websites;
- failure to follow correct procedure with regards to the administration of drugs;
- bullying;
- theft and selling items on an internet auction site;
- possession of stolen charitable items;
- failure to report a colleague who made hoax calls;
- inappropriate relationship;
- failure to provide required standard of care; and
- engaging in a sexual act in a public place.

Examples of the most common misconduct alleged and found are provided below.

### Self administering drugs

In 2006-2007 panels of the Conduct and Competence Committee considered seven cases where the allegations concerned registrants who had self administered drugs in the workplace and/or stolen drugs from the workplace. All seven cases involved paramedics or operating department practitioners, both of which are professions that have regular access to controlled drugs.

In two cases, panels imposed conditions of practice orders. In one case a registrant was suspended and in the final four, registrants were struck off the Register. In a number of these cases, the registrants were previously subject to an interim order due to the serious nature of the allegation and to protect the registrants themselves.

In the two cases where panels imposed a conditions of practice order, both of the registrants were paramedics. In one case the registrant admitted that his removal of Propofol and Midazolam, and his subsequent self-administering of those drugs, amounted to misconduct. When considering which sanction to impose the panel took into account a psychotic incident which the registrant had experienced. The panel imposed conditions which required the registrant to continue with the random drugs tests his employers required of him.

In the other case where a conditions of practice order was imposed, the registrant had removed Nubain from his employer and then self-administered it. The registrant in this case also admitted misconduct. Since the incident he had returned to full duties. The conditions of practice imposed required the registrant to confirm that he had not worked alone and had any drug usage audited at the end of each shift.

In both cases, the registrants were fully involved in the process.

One operating department practitioner was suspended as a result of taking from the hospital for his own use quantities of the injectable analgesic drug Tramadol. The registrant had been over-ordering the drug and had been using it to alleviate chronic back pain. The registrant was suspended because he was taking steps to overcome his addiction. The panel felt that a period of suspension would assist him.

In the other four cases, two paramedics and two operating department practitioners were struck off the Register. In one of the cases concerning an operating department practitioner, the registrant stole controlled and scheduled drugs from operating theatres and used them whilst at work. She also forged the signature of a doctor to obtain a controlled drug. She stole and used drugs on more than one occasion and subsequently admitted her addiction to drugs. The panel felt that she put patients at risk and compromised her own safety.

In the other case concerning an operating

department practitioner the registrant was found slumped in the staff toilets having self-administered a sedative and an anti-sickness drug. When found in the staff toilet she was required in recovery to perform her clinical duties. She was struck off as she had failed in her duty of care to her patients and had not behaved with integrity and honesty.

The two final cases concerned paramedics. One paramedic was on duty under the influence of Nubain and Diazemel. The panel felt that they had no option but to direct the Registrar to remove his name from the Register. In the last case, the paramedic concerned had misused and stolen morphine from her employer.

### **Attending work under the influence of alcohol**

In two cases – one concerning a biomedical scientist and the other a radiographer – the registrants attended work whilst under the influence of alcohol. In the case of the radiographer, the panel imposed a suspension order as they felt this would give the registrant an opportunity to resolve his alcohol dependency. However, in the case of the biomedical scientist, the registrant was struck off the Register. She had attended work under the influence of alcohol and made three pregnancy test errors, as well as 15 transcription errors, potentially resulting in the wrong drugs being prescribed to patients. The registrant had showed no insight into her failings and the nature of the error was so serious that the panel felt that they had no option but to strike the registrant from the Register.

### **Working whilst on sick leave**

In a number of cases registrants worked for other employers whilst on sick leave from their original employers. These cases again involved paramedics and operating department practitioners. The panels who sat to consider these cases, in all instances imposed a caution order. These were again cases where the registrants were involved in the fitness to

practise processes and recognised and had insight into the seriousness of their misconduct. The panels felt that the registrants concerned failed to display integrity and honesty, and had potentially put patients at risk by treating them whilst certified as 'sick'.

### **Sexual misconduct**

A number of the cases considered by fitness to practise panels in 2006-2007 had an element of sexual misconduct in the allegation. Examples of some of those cases are provided below.

In one instance, a paramedic had been convicted of driving without due care and attention. In most circumstances this type of conviction would not generally result in the panel imposing a striking off order and in fact, the panel did not find that this element of the allegation was well founded. However, the registrant's fitness to practise was found to be impaired by reason of his misconduct because he was found to have been engaging in a masturbatory act in public where he was likely to be seen by children. He was struck off the Register because of the serious nature of the misconduct and the need to maintain public confidence in the paramedic profession.

In a case concerning a podiatrist, the registrant was found in his treatment room at the hospital with his trousers round his ankles. On another date a pornographic magazine was found in the registrant's treatment room. The panel also found that the registrant was responsible for leaving KY jelly in a public toilet at the hospital. He was struck off due to the cumulative nature of his misconduct, which also included undertaking private work whilst on sick leave.

### **Lack of competence**

The types of competency issues that were considered in 2006-2007 included:

- failure to meet the standards of proficiency;
- failure to act autonomously;
- poor record keeping;

- improper and ineffective communication;
- incorrect assessment; and
- failure to complete care plans.

### **Review of the standards of conduct, performance and ethics**

It is a key requirement of the Health Professions Order 2001 that the HPC 'establish and keep under review the standards of conduct, performance and ethics expected of registrants and prospective registrants and give them such guidance on these matters as [we] see fit'. In 2006-2007 the Conduct and Competence Committee undertook a review of the standards of conduct, performance and ethics. We consulted on the changes to the standards earlier this year.

In 2006-2007 particular reference was made to the following standards in the decisions reached by panels of the Conduct and Competence Committee.

1. act in the best interests of your patients, clients and users
3. maintain high standards of personal conduct
4. provide any important information about conduct, competence or health
6. act within the limits of your knowledge, skills and experience
7. maintain proper and effective communication with patients, clients, users, carers and professionals
10. keep accurate patient, client and user records
12. limit your work or stop practising if your performance or judgement is affected by your health
13. carry out your duties in a professional and ethical way
14. behave with integrity and honesty; and
16. make sure your behaviour does not damage your profession's reputation

A breach of the standards of conduct, performance and ethics does not necessarily mean that a registrant's fitness to practise is impaired, but a breach of the standards is taken into consideration in proceedings of the Conduct and Competence Committee.

## Sanctions imposed

This table shows sanctions that have been imposed by profession.

**Table 4.5 Sanctions imposed by profession**

Profession	Struck off	Suspension	Caution	Conditions of practice	No further action	Not found	Removed	Not allowed
AS	0	0	0	0	0	0	0	0
BS	3	1	1	0	0	1	0	0
CH	2	2	4	0	0	3	1	0
CS	0	0	0	0	0	0	0	0
DT	0	1	0	0	0	0	0	0
ODP	4	1	4	1	1	1	0	1
OR	0	0	0	0	0	0	0	0
OT	2	4	1	1	2	3	0	0
PA	8	4	9	2	0	2	0	0
PH	3	3	3	1	2	3	0	0
PO	0	1	2	0	0	1	0	0
RA	0	1	2	1	1	1	1	0
SL	1	1	1	0	0	3	0	0

## Representation by registrants

When appearing before panels of our practice committees registrants are given an opportunity to attend and present their case. They are also entitled to have representation. Some registrants choose not to attend, have any representation or to provide any response to the allegation that has been put before them. Present at the hearings are legal assessors, whose role in instances such as this, includes ensuring that the panel determine whether

adequate notice has been served on the registrant and further ensuring that the hearing is conducted in a fair and impartial manner.

Table 4.6 shows the number and outcome of cases by representation.

**Table 4.6 Sanctions and representation**

<b>Representation</b>	<b>Number of final hearings</b>		
Registrant	13		
Representative	46		
None	43		

<b>Outcome</b>	<b>Representative</b>	<b>Registrant</b>	<b>None</b>
Case not found	14	0	4
Caution	14	7	6
Conditions of practice	3	2	1
No further action	4	1	1
Not allowed	0	1	0
Removed	0	0	2
Strike off	4	2	17
Suspension	7	0	12

The table below shows the professions that received representation at final hearings in 2006-2007.

**Table 4.7 Representation by profession**

<b>Profession</b>	<b>No representation</b>	<b>Represented self</b>	<b>Representative</b>
AS	0	0	0
BS	3	1	2
CH	5	0	7
CS	0	0	0
DT	1	0	0
ODP	6	3	4
OT	8	2	3
OR	0	0	0
PA	8	7	10
PH	4	0	11
PO	1	0	3
RA	5	0	2
SL	2	0	4

### Not well founded

When the HPC present a case, the onus is on us to prove that the allegation is well founded. This did not occur on 18 occasions in 2006-2007. Our legislation prevents us from publicising allegations that have not been well founded. However, we are obliged to provide the Council for Healthcare Regulatory Excellence (CHRE) with information about cases that have been considered by panels of the Conduct and Competence Committee. More information about the role of CHRE can be found later in this report.

Panels have to determine on the balance of probabilities whether the allegation that a registrant’s fitness to practise is impaired is well founded. Before they do this they are obliged to consider whether the facts as alleged occurred, whether those facts amount to the basis of the allegation (eg lack of competence or misconduct) and whether that misconduct amounts to impairment of fitness to practise. If all three elements are not found, then the panel will find that the case has not been proven.

The table below indicates the number of allegations that were not well founded. This includes cases that were considered by the Health Committee.

**Table 4.8 Cases not well founded**

Year	Number of cases
2004-2005	3
2005-2006	1
2006-2007	18

**Table 4.9 Cases not well founded by profession**

Profession	Number
Biomedical scientists	1
Chiropodists	3
Operating department practitioners	1
Occupational therapists	3
Paramedics	2
Physiotherapists	3
Prosthetists / orthotists	1
Radiographers	1
Speech and language therapists	3

In two cases it was alleged that the registrant’s fitness to practise was impaired by reason of their convictions/cautions. One registrant had been cautioned for possessing an offensive weapon in a public place. The weapon involved was a CS gas spray which was legal in the registrant’s place of birth.

The other case involved a police caution – the registrant was cautioned for criminal damage. The criminal damage took place at his place of work, at night, after he entered the premises using a key that he should not have had. The panel found that this was a one-off incident and that it was out of character. They felt that it was not the kind of incident that tended to undermine the public’s faith in the profession (in this case occupational therapy).

In two cases concerning paramedics, the allegations concerned treatment of patients. In the first case it was alleged that the paramedic’s fitness to practise was impaired due to his treatment of a patient, management of a scene and failure to take equipment to the scene of the incident. It was found that there was no evidence to support some elements of the allegation; regarding one element it was found that the registrant had failed to take some equipment to the scene and regarding another element that the

registrant was not responsible for the scene. The panel determined that the only element of the allegation that was proven (failure to take equipment to the scene) did not amount to impairment to fitness to practise. They found that the registrant had insight into the consequences of his action and completed reflective study in advance of the hearing.

In another case concerning a paramedic, the incident took place in 2004, and although the panel found some elements of lack of competence, they found that the registrant's fitness to practise was not currently impaired. They found that the registrant had attended courses and enhanced her skills.

Although the allegations were not well founded, the registrants concerned had both taken steps to improve and develop their practice, thus demonstrating another way in which the HPC fitness to practise process protects the public.

In one of the cases concerning an occupational therapist, it was alleged that the registrant's fitness to practise was impaired by reason of misconduct due to private use of a trust mobile phone. Although the panel felt that misconduct had occurred, they did not feel that it amounted to impairment to practice. The registrant had been fully involved in the proceedings both at trust and HPC level and showed insight into the misconduct which led to the allegation.

In the other case concerning an occupational therapist the allegation was of lack of competence as a basic grade occupational therapist. The panel felt that it was not lack of competence that explained the registrant's poor performance but her ill health.

Panels determined that in two cases concerning physiotherapists, the allegations were not well founded. CHRE has determined that in one of these cases the decision of the panel was unduly lenient. The case has been referred to the High Court and at the time of writing, we are awaiting a date for the case to be listed for hearing.

The other case concerned a physiotherapist

where it was alleged that her fitness to practise was impaired by reason of her lack of competence. The registrant admitted that she displayed a lack of competence in her employment. However, the panel determined that the registrant's fitness to practise was not impaired. The registrant showed insight into her problems and took measures to ensure that her practice was up to standard. By the time of the hearing she had completed a course and the panel felt that as a result of this, the registrant's fitness to practise was not impaired.

In the one case concerning a prosthetist/orthotist the allegation was not well founded. The events alleged occurred in 2001 and 2002 and the panel felt that the registrant's records were acceptable for that time period. In relation to the other elements of the allegation, which involved undertaking private work and issues with regards to footwear, the panel had no evidence to support the allegation and subsequently found that it was not well founded.

In a case concerning an operating department practitioner, the panel also found that there were issues with regards to the evidence. They did not feel that the HPC had proved the case.

There were three cases concerning speech and language therapists that were not well founded. In one case the panel did find lack of competence in relation to failure to provide input sessions for patients and a failure to follow policy. However, between the incident and the hearing the registrant had taken steps to address this failing and her employers had no concerns regarding any aspect of her work.

In another case concerning a speech and language therapist, the allegation was one concerning record keeping and assessment. The panel found that there was no evidence to demonstrate a lack of competence or misconduct. The panel noted that the registrant had worked for the trust for a very short time and that no patient had been put at risk during the period of employment.

In the final case concerning a speech and

language therapist, the hearing took in excess of 15 days to conclude – (in fact the hearing had begun in 2005-2006). There were 16 particulars of lack of competence/misconduct which the panel did not feel amounted to impairment to practice.

Panels considered three cases concerning chiropodists/podiatrists. Two cases concerned chiropodists/podiatrists who worked in private practice and one who worked for the NHS. In relation to the latter, the allegations concerned the registrant's decision to proceed with treatment without anaesthetic. The panel felt that the registrant had been justified in carrying out the procedure without anaesthetic and that it was a procedure routinely undertaken without anaesthetic.

In one case concerning a chiropodist/podiatrist, the allegations concerned communication issues and the course of action a registrant undertook in the treatment of a toe. The panel found that the registrant carried out treatment in accordance with the standards of conduct, performance and ethics and the standards of proficiency – and that the discomfort experienced by the complainant could sometimes be expected with a treatment of the type that they had undergone.

**In a number of cases identified above, registrants recognised their failings or acts which led to the allegations made against them. Furthermore, they took steps in addressing the issues that had been identified in advance of the hearing.**

In other cases it is demonstrable that there was no issue of current impairment or that the evidence did not support the allegation. However, it is also important to note that once an investigating panel has made a 'case to answer' decision in relation to an allegation, the HPC has to proceed with the allegation; there is no power for the officers of the HPC to decide not to proceed with a case on the basis of evidential issues. This responsibility is that of panels that are convened to hear cases.

We are continually striving to ensure consistency in our decision making and the committees continually review cases to ensure that this takes place. In 2007-2008 we will be undertaking a trends analysis of our cases and providing further guidance to panels on this matter.



# Review hearings

If a conditions of practice or suspension order is imposed, it will always be reviewed by another panel shortly before it is due to expire. It can also be reviewed if the registrant concerned makes an application for review. A registrant may do this in certain circumstances, such as when they are experiencing difficulties in meeting any conditions imposed by the original panel, or when new information relating to the order that was imposed has come to light. The HPC can also review a conditions of practice order when it appears that the registrant is in breach of any condition imposed by the panel.

When a conditions of practice order is reviewed, the review panel will look for evidence that the conditions imposed by the original panel have been met.

If a suspension order was imposed, a review panel might look for evidence that the anomalies that led to suspension have been dealt with.

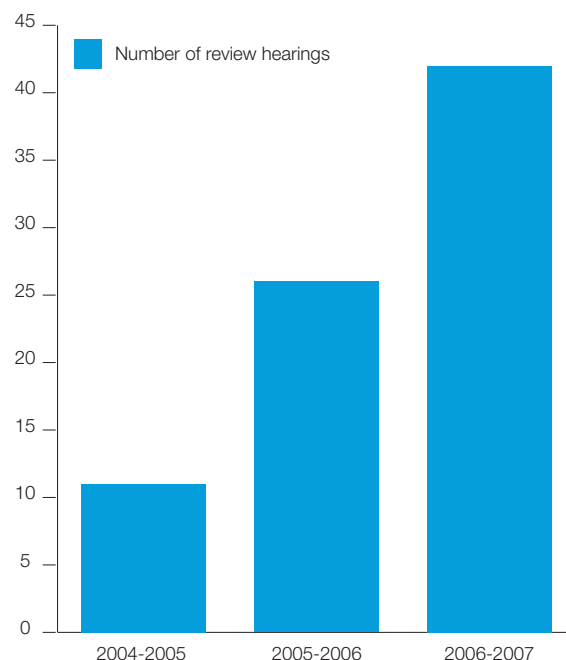
A review panel will always want to make sure that the public continue to be adequately protected. If they are not satisfied that someone is now fit to practise, they might extend a conditions of practice order, further extend the period the registrant was suspended for, or in certain circumstances, remove the registrant from the Register (known as a striking off order).

In 2006-2007 there were 42 review hearings. In these cases the registrants had been subject to either a conditions of practice or a suspension order.

**Table 5.1 Number of review hearings**

Year	Number of review hearings
2004-2005	11
2005-2006	26
2006-2007	42

**Graph 6.1 Number of review hearings**



The table above demonstrates an increase in the number of review hearings over the last three years. This trend is likely to continue as the volume of cases increases. The costs of a review hearing in 2006-2007 (which include the costs of the panel, shorthand writer and legal costs and in some instances venue hire) was in the region of £3,000-£5,000.

Highlighted below is the range of action panels have taken when reviewing cases, ranging from revoking conditions of practice orders to imposing an order directing the registrar to strike the registrant off the register. In a number of cases the panel extended the suspension order. This occurs in cases concerning competence and health where suspension is the highest available sanction for panels. This is because the sanction procedure is not intended to be punitive but endeavours as far as is possible to rehabilitate the registrant.

Panels generally continue suspension orders in cases concerning competence when this is the only way that the public would be adequately protected.

## Struck off

2006-2007 saw five cases where the panel decided to strike the registrant off the Register following a review hearing. The registrants involved are listed below.

- Natasha Gorringe
- Matthew Smith
- David Miller
- Josphat D Mwilaria
- Simon Harrison

In the case of Natasha Gorringe (a chiroprapist) the original panel hearing the case had determined that the registrant's fitness to practise was impaired by reason of her misconduct – as she had falsified patient records and breached patient confidentiality. In striking her off the Register the review panel felt that there was no information to suggest that a continuation of the suspension order would adequately protect the public.

Matthew Smith (a radiographer) had previously been suspended following his conviction in 2004 for making indecent photographs or pseudo photographs of a child. The review panel decided to strike him off the Register. Mr Smith had been redeployed in his trust in a non-clinical role. However, whilst employed in this role Mr Smith accessed, or attempted to access, websites which contained 'adult and sexually explicit material'. The panel felt that the original panel in suspending Mr Smith had given him a second chance. They felt that his behaviour demonstrated a lack of insight into his situation and directed that the Registrar strike him off the Register.

Another radiographer, Josphat Mwilaria, was suspended following a finding that his fitness to practise was impaired for reasons which included exposing a patient to radiation 85 times over the acceptable limit. The registrant was struck off at the review hearing.

David Miller, an operating department practitioner, had initially been suspended in 2005, when it was found that he had self-

injected drugs whilst on duty. The review panel imposed a striking off order as Mr Miller had failed to engage with the process and because there was no evidence to suggest that he had any willingness to deal with his misconduct.

## Conditions revoked

Conditions of practice are used by panels where they feel that failure or deficiency is capable of remedy. They are used when the panel are satisfied that there is no harm in allowing the professional to remain in practice. They have to be realistic and verifiable. In three cases in 2006-2007, the panels felt that it was appropriate to revoke the conditions that had been imposed on the registrants concerned and allow the individuals to return to practice unrestricted. In all three cases, the registrants had complied with the conditions of practice that had been imposed on them and had demonstrated insight into, and remorse for, the actions that had led to panels finding that their fitness to practise was impaired.

## Suspension imposed

In the following three cases, the registrants concerned had initially been subject to a conditions of practice order. The review panel revoked the orders that had been imposed and suspended the registrants involved (listed below).

- Fraymond Mayunga
- Joe Osmond
- Zanele Nxumalo

In the case of Fraymond Mayunga (a physiotherapist) the registrant advised that he had no intention of complying with the conditions that were initially imposed on him. Joe Osmond (a speech and language therapist) had also failed to comply with a conditions of practice order, and in the case of Zanele Nxumalo (a dietitian) it was found that she had not progressed beyond the level of a dietetic assistant. In all three cases the panel(s) felt that their only option was to suspend the registrants concerned.

## Review hearings

It is estimated that there will be 90 review hearings in 2007-2008. We anticipate that a large number of these cases will be presented by case managers from the Fitness to Practise Department, rather than by external lawyers

# Complaints about protection of title

**Table 6.1 Protection of title**

Type of complainant	2005-2006	2006-2007
Public	53	21
Police	31	38
HPC	10	10
Anonymous	50	78
Professional	225	137
<b>Total</b>	<b>369</b>	<b>284</b>

It is a criminal offence for an individual to represent themselves expressly or by implication as being registered by the HPC if they are not. Each profession on our Register has one or more protected titles. These titles can only be used by people on the Register.

We have seen a reduction in the number of protection of title complaints in 2006-2007. We inform individuals who are misusing a title that it is a criminal offence to do so. If they do not stop we issue a 'cease and desist notice'. We can then start criminal proceedings.

# High Court cases and the role of the Council for Healthcare Regulatory Excellence (CHRE)

The CHRE is a body that promotes best practice and consistency in the regulation of healthcare professionals among the nine UK healthcare regulatory bodies, including the HPC.

The CHRE may refer a regulator's final decision on a fitness to practise case to the High Court (or its equivalent in Scotland) if they feel that a decision made by the regulatory body is unduly lenient and that such a referral is in the public interest.

We have had one referral to the High Court in 2006-2007. At the time of writing, we are awaiting a hearing date.

Registrants can also appeal the decisions made by our panels to the High Court or the Court of Session. In 2006-2007 no decisions were appealed to the High Court, however, one case that was appealed in 2005-2006 was heard in 2006-2007. This case concerned the matter of Mohammed Khokhar, a clinical scientist. Between 7 and 10 March 2005 and again on 6 May 2005, a panel of the Conduct and Competence Committee heard an allegation regarding the fitness to practise of Mohammed Khokhar. The panel found that Dr Khokhar's fitness to practise was impaired by reason of his lack of competence whilst in the employment of North West Thames Regional Genetic Service and subsequently imposed a suspension order for one year. The case was considered by the Administrative Court on 11, 12 and 13 September 2006 and the judgment was handed down on 20 October 2006.

The grounds of Dr Khokhar's appeal were:

- that it was inappropriate for the panel to proceed to determine the issue of fitness to practise on the basis of practical, written and oral tests;
- that in 66 cases prior to suspension from duty the appellant was able to conduct cytogenetic analysis without error (thus demonstrating his competence);
- that the assessments considered by the panel were conducted in breach of the

Trust's capability procedures; and

- that there were criticisms of the strength of the evidence with reference to the available expert evidence.

The case was heard in the High Court by way of a 're-hearing' before Mr Justice Lloyd Jones. The judge was satisfied that the evidence clearly established Dr Khokhar's fitness to practise as a clinical scientist was impaired by reason of his lack of competence.

Substantial costs were incurred by the HPC in the course of this appeal, particularly as the re-hearing took three days. We asked for Dr Khokhar to pay the costs that we incurred and we were awarded £36,000.

# Conclusion from the Director of Fitness to Practise

In the light of the recent White Paper, 'Trust , Assurance and Safety – The Regulation of Health Professionals in the 21st century', it is clear that the function of fitness to practise remains as important, and as high on the regulatory agenda, as ever.

We were pleased to note the areas of our current practice which were highlighted by the Department of Health review as good practice; notably our use of the civil standard of proof, our arrangements for witness support, our preparations for receiving complaints by telephone, and our information for complainants. However, further challenges remain – particularly in relation to the future independent appointment and training of panel members. We look forward to working with stakeholders to ensure the smooth implementation of these processes.

In addition, the public and health professionals have ever-increasing expectations of professional regulation. We must continue to respond to these expectations, putting in place further improvements to ensure accessibility, fairness, and public protection.

This has been a very busy year for the FTP team. We have seen an increase in the volume of hearings, accompanied by operational improvements to ensure that we can deal effectively with cases. The challenge for us now is to continue this pace of development and improvement. At the same time, it must be recognised that our fitness to practise proceedings – even as they continue to grow in number and complexity – still involve only a tiny proportion of the health professionals on our Register. The majority remain fit to practise, and pride themselves on high standards of care.

Thank you for reading this report and I hope you have found it useful. If you have any feedback or comments, please email me at [ftp@hpc-uk.org](mailto:ftp@hpc-uk.org)

**Kelly Johnson**

Director of Fitness to Practise

# How to make a complaint

If you want to complain about a health professional registered by the HPC (a 'registrant'), you need to write to our Director of Fitness to Practise at the following address.

**Fitness to Practise Department  
Health Professions Council  
Park House  
184 Kennington Park Road  
London  
SE11 4BU**

If you need any more help, (including whether you feel your complaint should be taken over the telephone) you can also contact a member of the Fitness to Practise Department on the numbers below.

**Phone: +44 (0)20 7840 9814  
Fax: +44 (0)20 7582 4874**

You may also find useful our 'Reporting a concern' form, which is available on the HPC website: **[www.hpc-uk.org](http://www.hpc-uk.org)**

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# Protected titles

The titles below are protected by law. Anyone using one of these titles must be registered with the HPC, or they may be subject to prosecution and a fine of up to £5,000.

<b>Part</b>	<b>Subsection</b>	<b>Title</b>
Arts therapist	Art therapist	Art psychotherapist
		Art therapist
	Dramatherapist	Dramatherapist
	Music therapist	Music therapist
Biomedical scientist		Biomedical scientist
		Medical laboratory technician
Chiropodist / podiatrist		Chiropodist
		Podiatrist
Clinical scientist		Clinical scientist
Dietitian		Dietitian
		Dietician
Occupational therapist		Occupational therapist
Operating department practitioner		Operating department practitioner
Orthoptist		Orthoptist
Prosthetist / orthotist	Prosthetist	Prosthetist
	Orthotist	Orthotist
Paramedic		Paramedic
Physiotherapist		Physiotherapist
		Physical therapist
Radiographer		Radiographer
	Diagnostic radiographer	Diagnostic radiographer
	Therapeutic radiographer	Therapeutic radiographer
Speech and language therapist		Speech and language therapist
		Speech therapist



# Notes



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